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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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COMMITTEE AGAINST TORTURE

Twenty-first session

SUMMARY RECORD OF THE 363rd MEETING

Held at the Palais des Nations, Geneva,
on Friday, 20 November 1998, at 3 p.m.

Chairman: Mr. BURNS

CONTENTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (continued)

Conclusions and recommendations concerning the second periodic report of Tunisia

CLOSURE OF THE SESSION

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Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum to be issued shortly after the end of the session.

GE.98-19836 (E)

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Conclusions and recommendations concerning the second periodic report of Tunisia (continued)

1. The delegation of Tunisia resumed places at the Committee table.

2. The CHAIRMAN read out on behalf of the Country Rapporteur the original English text of the Committee's draft conclusions and recommendations concerning the second periodic report of Tunisia:

"1. The Committee considered the second periodic report of Tunisia (CAT/C/20/Add.7) at its 358th, 359th and 363rd meetings, held on 18 and 20 November 1998 (CAT/C/SR.358, 359 and 363) and has adopted the following conclusions and recommendations:

A. Introduction

2. Tunisia ratified the Convention on 23 September 1988 and made the declarations provided for in articles 21 and 22.

3. Its second periodic report was due on 22 October 1993. The Committee regrets that the report was received on 10 November 1997 only.

B. Positive aspects

4. During the period covered by the report measures were taken by the authorities to build a legal and constitutional framework for the promotion and protection of human rights. The Committee welcomes the establishment of a number of human rights posts, offices and units within the executive branch and within the civil society. The Committee also welcomes the efforts that were made to raise the level of awareness of the principles of human rights in the society. The Committee noted, in particular, the publishing of a code of conduct for law-enforcement officials, the setting up of human rights departments in Tunisian universities and the establishment of human rights units in some key Ministries.

5. The Committee also notes that, for the first time, an independent commission of investigation was established to examine the allegation of abuses that took place in 1991.

6. The Tunisian Constitution provides that duly ratified treaties have a higher authority than laws. Thus, the provisions of the Convention take precedence over domestic legislation.

C. Factors and difficulties impeding the application of the provisions of the Convention

7. The Committee is aware of the challenges that were facing the Government during the period covered by the report. However, the Committee emphasizes that no exceptional circumstances can ever provide a justification for failure to comply with the terms of the Convention.

D. Subjects of concern

8. The Committee reiterates its views that the definition of torture under Tunisian law is not in conformity with article 1 of the Convention, as the Tunisian Criminal Code inter alia uses the term 'violence' instead of 'torture' and article 101 of the Criminal Code penalizes the use of violence only when it is used without just cause.

9. The Committee is concerned over the wide gap that exists between law and practice with regard to the protection of human rights. The Committee is particularly disturbed by the reported widespread practice of torture and other cruel and degrading treatment perpetrated by security forces and the police that in certain cases resulted in death in custody. Furthermore, it is concerned over the pressure and intimidation used by officials, to prevent the victims from lodging complaints.

10. The Committee is concerned that many of the regulations existing in Tunisia for arrested persons are not adhered to in practice, in particular:

- the limitation of pre-trial detention to the 10-day maximum prescribed by law,
- the immediate notification of family members,
- the requirement of medical examination with regard to allegations of torture,
- the carrying out of autopsies in all cases of death in custody.

11. The Committee notes that arrests are very often made by plainclothes agents who refuse to show any identification or warrant.

12. The Committee is particularly disturbed by the abuses directed against women members of the families of detainees and exiled persons. It has been reported that dozens of women were subjected to violence and sexual abuse or sexual threats in order to put pressure on or to punish their imprisoned or exiled relatives.

13. The Committee feels that by constantly denying these allegations, the authorities are in fact granting those responsible for torture immunity from punishment, thus encouraging the continuation of these abhorrent practices.

14. The Committee notes further that the State party does not accede to requests for extradition of political refugees. The Committee expresses its concern that this should not be the only exception for refusal of extradition. In this regard, the Committee draws the attention of the State party to article 3 of the Convention that prohibits the extradition of a person if 'there are substantial grounds for believing that he would be in danger of being subjected to torture'.

E. Recommendations

15. The Committee calls upon the State party to put an end to the degrading practice of torture and to eliminate the gap between the law and its implementation and in particular to take up the following measures:

(a) To ensure strict enforcement of the provisions of law and procedures of arrest and police custody.

(b) To strictly enforce the procedures of registration, including notification of families of persons taken into custody.

(c) To ensure the right of victims of torture to lodge a complaint without the fear of being subjected to any kind of reprisal, harassment, harsh treatment or persecution, even if the outcome of the investigation into their claims does not prove their allegations, and to seek and obtain redress if these allegations are proven correct.

(d) To ensure that medical examinations are automatically provided following allegations of abuse and an autopsy is performed following any death in custody; that the findings of all investigations concerning cases of torture are made public, and that this information should include details of any offenses committed, the names of the offenders, the dates, places and circumstances of the incidents and the punishment received by those who were found guilty.

16. The Committee urges the State party to take the following measures:

(a) To reduce the police custody period to a maximum of 48 hours.

(b) To bring the relevant articles of the Criminal Code into line with the definition of torture contained in article 1 of the Convention.

(c) To amend the relevant legislation to ensure that no evidence obtained through torture shall be invoked as evidence in any proceedings except against a person accused of torture as evidence that the statement was made.

17. The Committee urges the State party to submit its third periodic report by 30 November 1999".

3. Mr. MORJANE (Tunisia) expressed great surprise at the Committee's conclusions. They did not reflect the discussion between the Committee and his country's delegation and emphasized the negative aspects of the human rights situation in Tunisia, saying nothing about any of the positive ones. The Committee's recommendations would be transmitted to his country's authorities, which, in a spirit of cooperation with the Committee, would examine them all in detail. He hoped that the Committee would bear in mind that it was difficult for delegations which appeared before it to deal with allegations of human rights violations of which they had previously been unaware.

4. The delegation of Tunisia withdrew.

The meeting was suspended at 3.15 p.m. and resumed at 3.20 p.m.

CLOSURE OF THE SESSION

5. The CHAIRMAN expressed to Mr. Zupančič the Committee's great appreciation of the work he had done as a member and of his willingness to take on new tasks and efficiency in discharging them. He wished him every success in his new functions at the European Court of Human Rights.

6. Mr. MAVROMMATIS thanked the Chairman for his conduct of the Committee's business.

7. After the customary exchange of courtesies, the CHAIRMAN declared the session closed.

The meeting rose at 3.25 p.m.

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COMMITTEE AGAINST TORTURE

Twenty-second session

SUMMARY RECORD OF THE 364th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 26 April 1999, at 10 a.m.

Chairman: Mr. BURNS

CONTENTS

ADOPTION OF THE AGENDA

ORGANIZATIONAL AND OTHER MATTERS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

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GE.99-41276 (E)

The meeting was called to order at 10.05 a.m.

ADOPTION OF THE AGENDA (item 1 of the provisional agenda) (CAT/C/50)

1. The provisional agenda (CAT/C/50) was adopted.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 3)

2. The CHAIRMAN said that a new vice-chairman had to be appointed to fill the vacancy left by the resignation of Mr. Zupančič, the two other vice-chairmen being Mr. Camara and Mr. González Poblete.

3. Mr. SØRENSEN suggested that, since he himself and the Chairman represented Western countries, Mr. Camara Africa and Mr. González Poblete South America, Mr. Yu Mengjia should be appointed in order to have Asia represented.

4. The CHAIRMAN said he took it that the members of the Committee supported Mr. Sørensen's proposal and wished Mr. Yu Mengjia to be appointed vice-chairman.

5. It was so decided.

6. The CHAIRMAN invited Mr. Mavrommatis to give an account of the remarks which he had made at the latest meeting of Chairpersons of the human rights treaty bodies and of what had happened during the extension of that meeting, at which a plan of action concerning three of the bodies, including the Committee against Torture, had been submitted, without however securing acceptance by the participants; the plan had therefore had to be sent back to the Secretariat for redrafting, now in conjunction with the three bodies concerned.

7. Mr. MAVROMMATIS said that he had received the new text and found it generally satisfactory, although it should bring out more clearly the increasing importance attached to the Committee's work. In particular, many countries confronted with problems of applications for asylum had organized seminars, at which the precedents established by the Committee for the consideration of communications submitted under the Optional Protocol had been brought forward. He had also made it clear at the meeting the Committee's budget allocation should be reviewed in the light of its increasing workload, since even if the Committee were to be given a third session it would soon have to envisage setting up working groups to meet between and just before and just after the sessions, in order to enable the Committee to discharge its mandate better.

8. The CHAIRMAN invited Mr. Sørensen to report on the meeting in March 1999 in Istanbul on the drafting of a manual on procedures for investigating allegations of torture.

9. Mr. SØRENSEN said that work had begun four years previously, using as a model the Minnesota Protocol, which described in detail the procedure to be followed in autopsies to detect traces of torture, with a view to the drafting of a manual describing methods of establishing whether a person claiming to

have been subjected to torture had in fact been tortured. That subject had been taken up at the Istanbul meeting, which he had attended as representative of the International Rehabilitation Council for Torture Victims. That very useful meeting had been attended by almost all the bodies involved in the fight against torture, except for the Committee, which had had no official representative. The participants had decided that the manual, originally conceived as a compendium of guidelines for NGOs, ought to be published as an official document of the United Nations and sent to the States parties. The proposed document had two parts: a very short basic text stating the principles to be followed in investigations, and a series of annexes listing the various possible investigation methods. Three working groups had worked on the draft text, each dealing with a different aspect: juridical and ethical; physical; and mental. He had worked with the Special Rapporteur on Torture, Mr. Nigel Rodley, on the legal and ethical aspects and had formulated the basic principles. A final version would be submitted to the United Nations in June and subsequently to as many bodies as possible, with a view to their offering comments, in particular at the meeting of the International Rehabilitation Council for Torture Victims, scheduled for September 1999 in New Delhi, which was to be attended by participants from all over the world.

10. The CHAIRMAN said that in December 1998 he had taken part in a workshop on refugees organized by UNHCR, the Greek Government and a foundation, which had been attended by representatives of all the regional political organs concerned with the protection of refugees. The participants had stated during the discussions that they were impressed by the Committee's work connected with the situation of refugees and, as reported in the records of the workshop, had expressed their support for the Committee.

11. Mr. MAVROMMATIS said that he had attended a seminar organized by Sweden's Ministry of Foreign Affairs and some NGOs, which had dealt mainly with the training of officials having to do with asylum seekers. He had tried to explain the differences between, on the one hand, the Committee's jurisprudence and the specific features of the Convention against Torture, which explicitly and absolutely prohibited the use of torture, and, on the other hand, some older instruments, including the Geneva Convention relating to the Status of Refugees.

12. The CHAIRMAN said that meetings of that kind showed that Governments throughout the world were becoming more aware of the fact that the fundamental international human rights rules compelled recognition and must be taken into account at the national level.

13. Mr. SØRENSEN asked whether the records of the workshop attended by the Chairman could be made available to the members of the Committee.

14. The CHAIRMAN said that 12 NGOs which followed the Committee's work closely had been officially invited to submit, before 20 April, information about the implementation of the Convention in the 10 countries whose reports would be considered at the current session.

15. Mr. BRUNI (Secretary of the Committee) pointed out that it was by invitation of the Committee that NGOs communicated information to it in accordance with the decision taken by the Committee at its ninth session.

16. The CHAIRMAN, noting that a deadline had been set so that members would have time to read the documents before the beginning of the session, asked whether members nevertheless wanted documents which arrived late to be distributed.

17. Mr. YAKOVLEV said that the ones which the Committee wished to examine should be distributed.

18. Mr. MAVROMMATIS said that the purpose of the deadline was to allow best use to be made of the documents and not to eliminate the ones submitted late.

19. Mr. YU Mengjia suggested that the deadline should be applied less strictly.

20. Mr. SØRENSEN said that a distinction should be made between information on cases of torture occurring after the deadline, which the Committee had a duty to examine, and information on events prior to the deadline, which the Committee might refuse to consider. However, both types of information should be accepted, for it was difficult to change the habits of NGOs with regard to meeting deadlines. On the other hand, they should be urged to submit only specific information.

21. The CHAIRMAN suggested that it should be pointed out to NGOs that if their documents reached the Committee during a session it might not be able to allocate the necessary time to them.

22. Mr. GONZÁLEZ POBLETE said that the Secretariat should provide NGOs, especially local ones, with the report of the State on which they had information to communicate, for they sometimes had difficulty in obtaining such reports from Governments.

23. Mr. BRUNI (Secretary of the Committee) explained that, once the report of a Member State had been received, the Secretariat distributed it to the members of the Committee before submitting it to the documents service. It was only in its final form as a United Nations document that the report was made available to NGOs.

24. Mr. YAKOVLEV stressed the importance of the documents already available to the Committee, in particular the report of the Human Rights Committee, which mentioned a number of cases of torture. That could constitute a useful information source for the consideration of reports and the drafting of the Committee's comments.

25. Mr. BRUNI (Secretary of the Committee) said that the Secretariat sifted the documents received in order to establish their relevance and that the concluding observations of the Human Rights Committee were one of the items selected and communicated to the members of the Committee.

26. Mr. SØRENSEN said that the conclusions of the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women on periodic reports should be sent directly to the Committee against Torture, for that would facilitate its work.

The meeting was suspended at 11 a.m. and resumed at 11.30 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4)

27. Mr. BRUNI (Secretary of the Committee) said that 105 initial reports had been due between June 1988 and March 1999 and that 73 of them had reached the Committee. Of the 32 reports not yet submitted, 22 were more than three years late, i.e. the reports of the following States: Uganda, Togo, Guyana, Brazil, Guinea, Somalia, Estonia, Yemen, Benin, Bosnia and Herzogovina, Cape Verde, Cambodia, Latvia, Seychelles, Antigua and Barbuda, Burundi, Slovakia, Slovenia, Costa Rica, Ethiopia, Albania and the United States of America. Those States had been given between 4 and 17 reminders depending on the length of their arrears, which was almost 11 years in the case of Uganda and Togo. Furthermore, at its eleventh session the Committee had requested Belize to submit a new version of its report, which had been found too short. Despite repeated reminders and a letter addressed to the Minister for Foreign Affairs, the requested report had still not been received.

28. Twenty-eight of the 80 second periodic reports due between June 1992 and March 1999 were overdue: 13 of them were more than three years late, i.e. the reports of the following States: Afghanistan, Belize, Cameroon, Uganda, Philippines, Togo, Guyana, Turkey, Australia, Brazil, Guinea, Somalia and Romania. Those States had already been sent between 3 and 10 reminders. Furthermore, 30 of the 49 third periodic reports due between June 1996 and March 1999 were overdue: several reminders had been sent to the States which were more than two years in arrears.

29. Additional information had been received from three countries. In December 1998, Denmark had submitted a publication on police self-defence techniques in response to the questions put by members of the Committee during its consideration of Denmark's third periodic report in May 1997; that publication was available in Danish to the members of the Committee. At the same time, the United Kingdom had made available the 1998 Northern Ireland Act and a publication on deaths in police custody in response to the questions raised by the Committee during its consideration of the United Kingdom's third periodic report in November 1998; lastly, in April 1999, Tunisia had communicated information about recently adopted legislation concerning the implementation of the Convention.

30. In addition to the reports which would be considered at the current session, 10 others had already been received and would be considered at future sessions of the Committee. He was referring to the reports of Austria, Azerbaijan, Finland, Kyrgyzstan, Malta, Uzbekistan, the Netherlands (on the Netherlands Antilles and Aruba), Peru, Poland and Portugal. Bahrain and the Czech Republic had indicated that their reports would be submitted shortly.

31. Mr. SØRENSEN said it was inexcusable that a country such as Uganda should be 11 years behind in submitting its report, for an official from that country had attended a United Nations training course on the preparation of such reports. In such cases other human rights treaty bodies informed States breaching their obligations so persistently that their situation would be considered at a forthcoming session even in the absence of a report and a delegation. The Committee should do likewise.

32. The CHAIRMAN pointed out that States which did not fulfil their obligations were mentioned in the Committee's annual report, although that means of bringing pressure to bear did not always have the desired effect.

The meeting rose at 11.45 a.m.